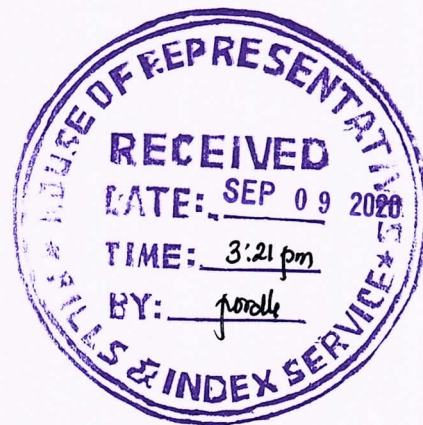




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session



HOUSE BILL NO. 7623

Introduced by Representative Sharon S. Garin

EXPLANATORY NOTE

This bill seeks to increase the private sector participation in the infrastructure industry, further amending Republic Act (RA) No. 6957, entitled "*An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes*," as amended.

The 1987 Philippine Constitution recognizes the indispensable role of the private sector as a partner of the government in growth and development.

In response to this State policy, the Eight Congress of the Philippines enacted RA 6957, also known as the "*Build-Operate-and-Transfer (BOT) [I] Law*" and signed by then Pres. Corazon S. Aquino on July 9, 1990. The law significantly increased private investment in infrastructure in the Philippines by promoting private sector participation.

In 1994, the law was further amended by Republic Act No. 7718 in order to provide for an increased number of variants of BOT contractual arrangements. Two decades later, there is still a need to enhance policy framework that is responsive to the current economic environment. There is also a need to raise the effectiveness of the participation of the private sector and to keep policies attuned to the changing business environment. This will also enable the private sector to support the government as it rolls out "game-changing" flagship infrastructure projects in the country.

During the Seventeenth Congress, Representative Gary C. Alejano filed a measure on the same subject matter, but it was not passed into law.

Among the proposed amendments to the BOT Law are: (1) adoption of new approaches on unsolicited proposals to ensure transparency and competition, without sacrificing speed; (2) introduction of the "projects of national significance" as a classification of infrastructure projects which, when classified as such, will enjoy incentives, such as exemption from real property tax, restrictions on imposable local taxes and automatic grant of business permits, among others; and (3) protection of these projects from being the subject of judicial reliefs such as temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, appearing to be 'S. Garin', with a large, stylized loop at the top.

SHARON S. GARIN
AAMBIS-Owa Party-list



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HOUSE OF REPRESENTATIVES
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HOUSE BILL NO. 7623

Introduced by Representative Sharon S. Garin

AN ACT
INCREASING THE PRIVATE SECTOR PARTICIPATION IN THE
INFRASTRUCTURE INDUSTRY, AMENDING FURTHER REPUBLIC ACT NO.
6957, ENTITLED "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION,
OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE
PRIVATE SECTOR, AND FOR OTHER PURPOSES," AS AMENDED

Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:

SECTION. 1. Section 4-A of the same Act, as amended is hereby further
amended to read as follows:

"SEC. 4-A. *Unsolicited proposals.* – Unsolicited proposals for
projects may be ~~[accepted by any government agency or local~~
~~government unit on a negotiated basis: *Provided, That,* all the following~~
~~conditions are met: (1) such projects involve a new concept or~~
~~technology and/or are not part of the list of priority projects, (2) no direct~~
~~government guarantee, subsidy or equity is required, and (3) the~~
~~government agency or local government unit has invited by publication,~~

20 ~~for three (3) consecutive weeks, in a newspaper of general circulation,~~
21 ~~comparative or competitive proposals and no other proposal is received~~
22 ~~for a period of sixty (60) working days: *Provided, further,* That in the~~
23 ~~event another proponent submits a lower price proposal, the original~~
24 ~~proponent shall have the right to match that price within thirty (30)~~
25 ~~working days)]~~ **SUBMITTED. UPON RECEIPT OF THE**
26 **UNSOLICITED PROPOSAL, THE GOVERNMENT AGENCY,**
27 **GOVERNMENT-OWNED AND CONTROLLED CORPORATION**
28 **(GOCC), OR LOCAL GOVERNMENT UNIT (LGU) CONCERNED MAY**
29 **DO ANY OF THE FOLLOWING:**

30 **(1) USE THE UNSOLICITED PROPOSAL AS THE BASIS FOR**
31 **PUBLIC BIDDING AS PROVIDED IN SECTION 5 OF THIS ACT**
32 **AND IF A FINAL AWARD TO A WINNING BIDDER IS MADE ON**
33 **THE BASIS OF THE UNSOLICITED PROPOSAL WITHIN ONE (1)**
34 **YEAR FROM THE SUBMISSION THEREOF, AS DETERMINED BY**
35 **THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY**
36 **(NEDA), THE ORIGINAL PROPONENT OF THE UNSOLICITED**
37 **PROPOSAL MAY BE REIMBURSED FOR COSTS INCURRED IN ITS**
38 **PREPARATION, INCLUDING, THE COST OF ANY FEASIBILITY**
39 **STUDY UNDERTAKEN: *PROVIDED,* THAT SUCH**
40 **REIMBURSEMENT IS (A) EQUIVALENT TO THE AMOUNT**
41 **DETERMINED BY NEDA, BUT NOT EXCEEDING THREE PERCENT**
42 **(3%) OF THE TOTAL PROJECT COST, EXCLUDING ANY PROJECT**

**COST BORNE BY THE GOVERNMENT SUCH AS THE COST OF
RIGHT-OF-WAY ACQUISITIONS, AND (B) PAID IN FULL BY THE
WINNING BIDDER AS A REQUIREMENT FOR THE AWARD OF
THE PROJECT;**

**(2) ACCEPT THE UNSOLICITED PROPOSAL ON A
NEGOTIATED BASIS SUBJECT TO THE FOLLOWING
CONDITIONS: (A) THE PROJECTS INVOLVE A NEW CONCEPT IN
TECHNOLOGY AND ARE NOT PART OF THE LIST OF PRIORITY
PROJECTS; (B) NO DIRECT GOVERNMENT GUARANTEE,
SUBSIDY OR EQUITY, OR ANY FORM OF PAYMENT OR SECURITY
FROM THE GOVERNMENT IS REQUIRED AS PROVIDED IN THE
IMMEDIATELY SUCCEEDING SECTION; AND (C) THE
GOVERNMENT AGENCY OR LGU HAS INVITED BY PUBLICATION
FOR THREE (3) CONSECUTIVE WEEKS, IN A NEWSPAPER OF
GENERAL CIRCULATION, COMPARATIVE OR COMPETITIVE
PROPOSALS, AND NO OTHER PROPOSAL IS RECEIVED FOR A
PERIOD TO BE DETERMINED BY NEDA, BUT NOT TO EXCEED
ONE (1) YEAR: PROVIDED, THAT IN THE EVENT ANOTHER
PROPONENT SUBMITS A PROPOSAL LOWER IN PRICE, THE
ORIGINAL PROPONENT SHALL HAVE THE RIGHT TO MATCH
THAT PRICE WITHIN THIRTY (30) WORKING DAYS; OR**

(3) REJECT THE UNSOLICITED PROPOSAL."

65 SEC. 2. A new section is hereby added after Section 4-A of the same
66 Act, as amended, and denominated as Section 4-B to read as follows:

67 **"SEC. 4-B. PROHIBITION AGAINST GOVERNMENT**
68 **GUARANTEES OR PAYMENTS. – NOTWITHSTANDING ANY**
69 **AGREEMENT TO THE CONTRARY, THE PROJECT PROPONENT OF**
70 **AN UNSOLICITED PROPOSAL ACCEPTED BY THE GOVERNMENT**
71 **ON A NEGOTIATED BASIS IN ACCORDANCE WITH SECTION 4-A**
72 **(2) SHALL NOT, AT ANYTIME, BE ENTITLED TO ANY FORM OF**
73 **PAYMENT OR SECURITY FROM THE GOVERNMENT INCLUDING**
74 **COST SHARING, CREDIT ENHANCEMENT, DIRECT OR INDIRECT**
75 **GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY."**

76 SEC. 3. A new section is hereby added after Section 10 of the same Act, as
77 amended and denominated as Section 10-A to read as follows:

78 **"SEC. 10-A. PROJECTS OF NATIONAL SIGNIFICANCE. –**
79 **UPON CERTIFICATION AND RECOMMENDATION OF NEDA, THE**
80 **PRESIDENT MAY CLASSIFY CERTAIN PROJECTS UNDERTAKEN**
81 **UNDER THIS ACT AS PROJECTS OF NATIONAL SIGNIFICANCE.**
82 **PROJECTS OF NATIONAL SIGNIFICANCE ARE ENTITLED TO THE**
83 **FOLLOWING INCENTIVES:**

84 **(A) ALL REAL PROPERTIES WHICH ARE ACTUALLY AND**
85 **DIRECTLY USED FOR THE PROJECT ARE EXEMPT FROM ANY**
86 **AND ALL REAL PROPERTY TAXES LEVIED UNDER THE LOCAL**
87 **GOVERNMENT CODE;**

88 **(B) ALL LOCAL TAXES IMPOSED IN METRO MANILA OR BY**
89 **A PROVINCE, CITY OR MUNICIPALITY UPON THE PROJECT**
90 **PROPONENT PURSUANT TO THE LOCAL GOVERNMENT CODE**
91 **SHALL NOT EXCEED FIFTY PERCENT (50%) OF ONE PERCENT**
92 **(1%) OF GROSS SALES OR RECEIPTS OF THE PRECEDING**
93 **CALENDAR YEAR;**

94 **(C) THE NECESSARY BUSINESS PERMITS, INCLUDING**
95 **ANY RENEWAL THEREOF, SHALL BE GRANTED OR ISSUED TO**
96 **THE WINNING PROJECT PROPONENT UPON TENDER OF THE**
97 **REQUIRED TAXES AND FEES TO THE APPROPRIATE LGU.**

98 **FOR PURPOSES OF THIS SECTION, IN ORDER FOR A**
99 **PROJECT TO QUALIFY AS A PROJECT OF NATIONAL**
100 **SIGNIFICANCE, THE FOLLOWING CONDITIONS MUST BE**
101 **COMPLIED WITH:**

102 **(1) THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE**
103 **BILLION PESOS (P5,000,000,000,00); AND**

104 **(2) THE PROJECT MAY DIRECTLY BENEFIT AT LEAST TWO**
105 **(2) PROVINCES."**

106 SEC. 4. A new section to be numbered as Section 11 of the same Act is
107 hereby added to read as follows:

108 **"SEC. 11. *PROHIBITION ON THE ISSUANCE OF***
109 ***TEMPORARY RESTRAINING ORDERS, PRELIMINARY***
110 ***INJUNCTIONS AND PRELIMINARY MANDATORY INJUNCTIONS.***

111 – EXCEPT FOR THE SUPREME COURT, NO COURT SHALL ISSUE
112 ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY
113 INJUNCTION OR PRELIMINARY MANDATORY INJUNCTION
114 AGAINST THE GOVERNMENT, OR ANY OF ITS SUBDIVISIONS,
115 OFFICIALS OR ANY PERSON OR ENTITY, WHETHER PUBLIC OR
116 PRIVATE, ACTING UNDER THE THE AUTHORITY OF THE
117 GOVERNMENT, TO RESTRAIN, PROHIBIT OR COMPEL ANY OF
118 THE FOLLOWING ACTS WITH REGARD TO PROJECTS OF
119 NATIONAL SIGNIFICANCE UNDER THE IMMEDIATELY
120 PRECEDING SECTION:

121 (A) ACQUISITION, CLEARANCE AND DEVELOPMENT OF
122 THE RIGHT-OF-WAY AND SITE OR LOCATION;

123 (B) BIDDING OR AWARDING;

124 (C) COMMENCEMENT, PROSECUTION, EXECUTION,
125 IMPLEMENTATION AND OPERATION;

126 (D) TERMINATION OR RESCISSION OF THE CONTRACT;
127 OR

128 (E) THE UNDERTAKING OR AUTHORIZATION OF ANY
129 OTHER LAWFUL ACTIVITY NECESSARY OR IN CONNECTION
130 WITH THE EXECUTION OR IMPLEMENTATION OF THE PROJECT.
131

132 ~~THIS~~ THE PROHIBITION SHALL APPLY IN ALL CASES,
133 DISPUTES OR CONTROVERSIES INSTITUTED BY A PRIVATE

134 **PARTY, INCLUDING CASES FILED BY BIDDERS OR THOSE**
135 **CLAIMING TO REPRESENT SUCH BIDDERS INVOLVING**
136 **PROJECTS OF NATIONAL SIGNIFICANCE. THIS PROHIBITION**
137 **SHALL NOT APPLY WHEN THE MATTER IS OF EXTREME**
138 **URGENCY INVOLVING A CONSTITUTIONAL ISSUE, SUCH THAT**
139 **UNLESS A TEMPORARY RESTRAINING ORDER IS ISSUED,**
140 **GRAVE INJUSTICE AND IRREPARABLE INJURY MAY ARISE. THE**
141 **APPLICANT SHALL FILE A BOND, IN AN AMOUNT TO BE FIXED**
142 **BY THE COURT, WHICH BOND SHALL ACCRUE IN FAVOR OF THE**
143 **GOVERNMENT IF THE COURT RENDERS A DECISION THAT THE**
144 **APPLICANT IS NOT ENTITLED TO THE RELIEF SOUGHT.**

145 **ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY**
146 **INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION**
147 **ISSUED IN VIOLATION OF THIS SECTION IS VOID AND OF NO**
148 **FORCE AND EFFECT.”**

149 SEC. 5. Sections 11, 12 and 13 of the same Act, as amended are hereby
150 renumbered as Sections 12, 13 and 14 accordingly.

151 SEC. 6. Within sixty (60) days from the effectivity of this Act, the Secretary of
152 Public Works and Highways shall, in coordination with the Secretary of Finance,
153 Secretary of Local Government, Director General of the National Economic and
154 Development Authority, and duly authorized representative from the private Philippine
155 construction industry, issue the necessary rules and regulations for the effective
156 implementation of this Act.

157 SEC. 7. This Act shall take effect fifteen (15) days after its publication in the
158 *Official Gazette* or in a newspaper of general circulation.

159 Approved,